

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HUBERT D. MATTERN)

For Appellant: Hubert D. Mattern, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Hubert D. Mattern against a proposed assessment of additional personal income tax in the amount of \$59.74 for the year 1974.

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The issue presented is whether appellant is entitled to a moving expense deduction.

On his 1974 return appellant claimed a deduction in the amount of \$3,795.00 for expenses allegedly incurred in his move from Illinois to California. Appellant was not reimbursed for this expense so respondent disallowed the deduction and issued the deficiency assessment. Appellant protested the assessment and this appeal followed.

Section 17266 of the Revenue and Taxation Code allows a deduction for certain moving expenses of a taxpayer. Subdivision (d) limits this deduction, for interstate moves, by providing:

In the case of an individual whose former residence was outside this state and his new place of residence is located within this state . . . the deduction allowed by this section shall be allowed only if any amount received as payment for or reimbursement of expenses of moving from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

We have previously held that absent reimbursement for the expenses of an interstate move, a taxpayer is not entitled to a moving expense deduction under section 17266. (Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977.)

Appellant appears to concede that the above reimbursement is required under the statute. Thus, his principal contention on appeal is that subdivision (d) of section 17266 discriminates against those who make interstate moves. This argument, in the nature of a complaint of a denial of equal protection, was raised in earlier cases where interstate and intrastate moves were accorded different tax treatment. (Appeal of Harold and Sylvia Panken, Cal. St. Bd. of Equal., Sept. 13, 1971; Appeal of Albert E. and Jean S. Hornsey, Cal. St. Bd. of Equal., June 2, 1971.) In those cases we invoked our well established policy of declining to rule on constitu-

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tional questions raised in appeals involving deficiency assessments. That policy is based upon the absence of any specific statutory authority which would allow the Franchise Tax Board to obtain judicial review Of an unfavorable decision, and we believe that such review should be available for questions of constitutional importance. The described policy properly applies to this appeal and disposes of appellant's principal argument.

Accordingly, respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Hubert D. **Mattern** against a proposed assessment of additional personal income tax in the amount of \$59.74 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1978, by the State Board of Equalization.

George L. Fuller Chairman
Philip Olson Member
William L. Bernstein Member
John S. Searcy Member
 Member